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Defendants.

ORDER

(S.D.N.Y.2017), appeal withdrawn, No. 18-633, 2018 WL 2740233 (2d Cir. Mar. 20, 2018) (quoting *Music, Inc. v. Prana Hospitality*,

Inc., 158 F. Supp. 3d, 184, 198 (S.D.N.Y. 2016) for the recognized practice of the Second Circuit, whereby courts "commonly award, in cases of non-innocent infringement, statutory damages of between three and five times the cost of the licensing fees the defendant would have paid"); Realsongs, Universal Music Corp. v. 3A N. Park Ave. Rest Corp., 749 F. Supp. 2d 81, 87 (E.D.N.Y. 2010) (holding as reasonable statutory damages an award of three times the amount of license fees owed); Barnaby Music Corp. v. Catoctin Broadcasting Corp., No. Civ-86-868, 1988 WL 84169, at *5 (awarding maximum damages of \$11,250 where unpaid licensing fees amassed to \$2,245).

JSN argues that its Rule 68 offer exceeds five times the highest conceivable license fee for the use at issue in this case, because the facts to-date show that if the use was unlicensed, it was negligent at best and not willful. Plaintiff relies on a number of cases discussing statutory damages where the defendant defaulted and which are not particularly relevant here.

Based on JSN's representations, it appears unlikely that Plaintiff will recover more than the amount of the Rule 68 offer and, accordingly, will be responsible for certain costs from the date of the rejection of the offer forward. Costs relating to deposition transcript alone could run thousands of dollars. It also appears that from Plaintiff's counsel's characterization of

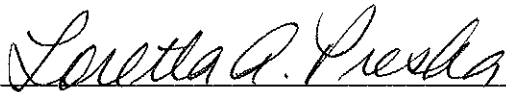
Plaintiff as "working class" that Plaintiff and his counsel would not be able to address multiple thousands of dollars of costs.

Accordingly, Plaintiff shall post a bond no later than July 31 in an amount not less than \$10,000 in order to proceed with the action.

SO ORDERED.

Dated: New York, New York

July 12, 2018



LORETTA A. PRESKA
Senior United States District Judge